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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,301	01/13/2006	Atsushi Kikuchi	Q87762	5170
23373	7590	06/10/2010	EXAMINER	
SUGHRUE MION, PLLC			AUGHENBAUGH, WALTER	
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20037			1782	
			NOTIFICATION DATE	DELIVERY MODE
			06/10/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sughrue@sughrue.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/533,301	KIKUCHI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	WALTER B. AUGHENBAUGH	1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 March 2010.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,6-8 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) 6-8,11 and 13 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,10 and 12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### *Acknowledgement of Applicant's Amendments*

1. The amendments made in claim 1 in the Amendment filed March 10, 2010 have been received and considered by Examiner.
2. New claims 10-13 presented in the Amendment filed March 10, 2010 have been received and considered by Examiner.

### *Election/Restrictions*

3. Newly submitted claims 11 and 13 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: method claims 11 and 13 fall within the Group II method claims 6-8 identified in the restriction requirement in the Office Action mailed April 3, 2008.
4. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 11 and 13 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

## **WITHDRAWN REJECTIONS**

5. The 35 U.S.C. 112, second paragraph, rejection of claim 1 has been withdrawn due to Applicant's amendments in claim 1.
6. The 35 U.S.C. 102(b) rejection of claims 1-3 as being anticipated by Yamada (USPN 4,528,219) has been withdrawn due to Applicant's amendments in claim 1 in the

Amendment filed March 10, 2010, and the statements made in the Declarations under 37

CFR 1.132 filed March 10, 2010.

***NEW REJECTION***

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt et al. (USPN 5,804,016).

In regard to claims 1-3, Schmidt et al. teach a preform having the structural characteristics that are positively recited by product-by-process claim 1. Fig. 4 and col. 5, lines 3-51 (three layer PET / PC-PET / PET preform: PC-PET is recycled polyesters [col. 10, lines 55-60]; PET is polyethylene terephthalate). The layers of PET have the claimed property regarding time to maximum calorific value of isothermal crystallization because the layers are PET layers (100% PET), which falls within the scope of compositions recited in claims 1 and 2.

In regard to claims 10 and 12, the preform of Schmidt et al. meets the structural limitations that are positively recited by product-by-process claims 10 and 12 because claims 10 and 12 are directed to an intermediate product of the preform (the molten resin mass), and do not imply any characteristic of the final product (the preform).

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 7:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1782

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /

Examiner, Art Unit 1782

6/03/10

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1782